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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No.

JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INC. (JAPWANCAP, INC.)*

v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner respectfully prays that a writ of certiorari issue to review the action of the United States Court of Claims, which, on May 12, 1967 denied a re-hearing of its decision of February 17, 1967 which granted the defendant's motion to dismiss plaintiff's amended petition on the ground that the six (6) years Statute of Limitations had run.

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* Consisting of some 150,000 Filipino families, all members of Japwancap, Inc. which is a non-stock civic corporation incorporated under the laws of the Republic of the Philippines, represented by Mr. Alfredo R. Abcede who is the president and executive director of Japwancap, Inc.

OPINION BELOW

The opinion of the Court of Claims is reported in 373 F. (2) 356: 178 Ct. Cl. 630 (1967). It is printed in the Appendix, p. 1a, *infra.*

JURISDICTION

The United States Court of Claims on February 17, 1967 entered its opinion dismissing the action filed in that Court and on May 12, 1967 denied a re-hearing. On timely application Mr. Justice Brennan on July 6th, 1967 signed an order extending the time in which to file this petition for a writ of certiorari to and including September 11, 1967. The jurisdiction of this Court is invoked under 25 U.S.C. Sec. 1255 (1).

QUESTIONS PRESENTED FOR REVIEW

Whether there was such a fraudulent concealment of material facts by the United States as to toll the Statute of Limitations and to estop the United States by its own conduct from raising the defense of the Statute of Limitations.

CONSTITUTIONAL PROVISIONS, CONVENTIONS, AND TREATIES INVOLVED

UNITED STATES CONSTITUTION, 5TH AMENDMENT:

> "No person shall be...deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

FIRST HAGUE CONVENTION (1899) AND SECOND HAGUE CONVENTION (1907) SECTION III, ARTICLE XLVI:

> "Family honours and rights, individual lives and private property . . . must be respected.
> Private property cannot be confiscated."

TREATY OF PEACE BETWEEN THE ALLIED POWERS AND JAPAN:

Article 14(b)

"Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan or its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation."

STATEMENT OF THE CASE

In the Japanese occupation of the Philippine Islands during World War II Japanese occupation currency was used as legal tender. Refusal to accept such currency at face value was severely punished by the Japanese.

During this same period the United States secretly printed and circulated large amounts of counterfeit Japanese occupation currency, practically identical with the genuine Japanese occupation currency, which was used by the United States to support its agents in the Philippines and for sabotage and dislocation of the Philippine economy while under Japanese occupation.

Plaintiff, representing persons who were United States citizens and nationals residing in the Philippine Islands during World War II, seeks compensation for the large amounts of counterfeit Japanese occupation currency issued by the United States which it holds and which became valueless immediately following the Japanese surrender.

Plaintiff claims that under the United States Constitution, the secret manufacturing and circulation in the Philippines by the United States of counterfeit Japanese occupation currency constituted a taking of private property without due process of law or just compensation and violated the Fifth Amendment to the Constitution, as well as the First and Second Hague Conventions to which the United States is a signatory.

In the Court of Claims plaintiff also claimed compensation for the genuine Japanese occupation currency as well as compensation for losses of human life and property, all of which claims were alleged to have been waived by Article 14(b) of the Japanese Peace Treaty. Such waiver is alleged to have been forced upon the Philippine Government under duress by the United States. However this Petition for Certiorari does not involve these latter claims but solely plaintiff's claim for redemption of the counterfeit currency which was secretly manufactured and circulated by the United States.

This Petition seeks a remand to a Commissioner to take evidence on the extent of plaintiff's knowledge relative to the currency operations of the United States within the territorial limits of the Philippine Islands during World War II. Specifically, did the defendant by classifying everything pertaining to the counterfeiting as "TOP SECRET" make such operations "inherently unknowable" at the time of the accrual of plaintiff's claim, and did defendant so conceal its acts as to keep plaintiff unaware of the existence of the counterfeiting until the Statute of Limitations had already run? *Urie* v. *Thompson*, 337 U.S. 163, 169 (1949)

REASONS FOR GRANTING THE WRIT

The issues here involved concern the honor and integrity of the United States as sovereign and trustee of the basic rights of Filipinos who were citizens and nationals of the United States, and go far beyond the particular facts and parties involved. These issues are so unusual and are of such substance and importance under the Constitution, laws and treaties of the United States that they warrant review by this Court.

The defendant based its defense against plaintiff's suit on the six year Statute of Limitations, and the Court of Claims granted the defendant's Motion to Dismiss. However, plaintiff believes that since the action of the Court of

Claims was based upon Defendant's Motion to Dismiss, then the factual allegations in plaintiff's Petition, in its Answer to Defendant's Motion to Dismiss, in its Memorandum Reply to the Commissioner's Opinion, and in the Affidavit of Mr. Alfredo Abcede that it did not learn until 1964 of the secret plans and orders of defendant for counterfeiting Japanese occupation currency, should, under the following cases, be assumed to be true and correct:

Guessefeldt v. *McGrath,* 342 U.S. 308, 310 (1952)

United States v. *New Wrinkle, Inc.,* 342 U. S. 371, 373 (1952)

In *Holloway* v. *Appleget,* (New Jersey 1897), 40 At. 27, the Court held (p. 28)

> "there . . . is no reason why a court of equity should not, by the use of its injunctive power, disarm a defendant from using the statute (of limitations) fraudulently in an action at law."
>
> ". . . it seems clear that a court of equity will interfere, although the cause of action may not have arisen out of a technically fraudulent act, *if the defendant has employed any means to mislead the plaintiff, or to hide from him the fact that a cause of action has arisen.*" (Emphasis added)

In *Mulholland* v. *United States,* (1964) 165 Ct. Cl. 231, the Court of Claims ruled that a fraudulent concealment tolls the Statute of Limitations and held in abeyance the defendant's motion for summary judgment pending a trial to determine whether a fraud was in fact practiced by the defendant and if so, when the plaintiff discovered such a fraud.

In *Ayako Honda* v. *United States,* No. 164, October Term, 1966, this Court in effect held that the bar of the Statute of Limitations should be liberally construed in favor of the plaintiff and under the facts of that case, invoked the equitable principle of tolling the statute of limitations.

In *Murphy* v. *Dyer,* 260 F. Supp. 822 (1966) it was held, in a medical malpractice suit brought long after the Colorado statute of limitations had run, that where a defendant fraudulently conceals material facts, the statute of limitations is tolled and a motion to dismiss will be denied. The same result was reached in:

Johnson v. *St. Patrick's Hospital,* 417 Pac. (2) 469 (1966)

Morgan v. *Grave Hospital,* 144 S.E. (2) 156 (1965)

Airs v. *Bonebrake,* 313 Pac. (2) 982 (1957)

Rosane v. *Singer,* 149 Pac. (2) 372 (1944). Also see annotation in 80 A.L.R. (2) 368, 388.

It appears obvious that a wrongdoer should not be permitted to profit by his fraudulent conduct and the statute of limitations should not begin to run until the cause of action is discovered or could through diligence have been discovered. *Trellock* v. *Haselo,* 218 App. Div. 313; 218 N.Y.S. 139, 74 A.L.R. 1317 (1926).

In *U.S.* v. *Dickinson,* 331 U.S. 745, 749 (1947), and in *Klein* v. *US,* 152 Ct. Cl. 221 (1961); cert. denied 366 U.S. 936 (1961), it was held that where plaintiff's loss was neither known nor ascertainable until long after the Statute of Limitations had run, then in such a case the claim is not barred by the Statute of Limitations.

Plaintiff concedes, as Judge Durfee in his learned opinion in the Court of Claims states, that the accrual date of the cause of action was prior to December 14, 1958. However, the orders for the counterfeiting of the Japanese occupation currency were classified "TOP SECRET" by defendant and, in compliance with restrictions inherent in this continued classification, the defendant refused to reveal any information and has successfully resisted all discovery efforts by the plaintiff, via Motions for Calls in the Court of Claims, to obtain any information on the counter-

feiting operations. Thus the defendant has by its own acts toiled the Statute of Limtations.

The Court of Claims under its Rule 54(b) referred the defendant's Motion to Dismiss to a Commissioner for his recommendations of conclusions of law but no evidence was ever heard by the Commissioner nor was any opportunity ever afforded the plaintiff to testify or to put evidence into the record nor was any request ever made for any information from either the plaintiff or defendant nor was the case ever scheduled for a conference or oral argument before the Commissioner.

The intent of this Petition is to have the plaintiff's case remanded to a Commissioner to take evidence as to the extent of plaintiff's knowledge and whether a fraudulent concealment by defendant was practiced upon plaintiff and when the plaintiff discovered such fraud. However, plaintiff also believes that the following equitable considerations are important:

After World War II had ended, the United States redeemed some $200,000.00 of occupation currency on the island of Mindoro but refused to redeem such occupation currency elsewhere in the Philippines, thus favoring one particular group of holders, for its own reasons, against all others.

According to a news article in the Washington Post of July 16, 1967, (pp. B1-3) after World War II the British Government in Hong Kong as a matter of principle and honor, redeemed through the Hong Kong and Shanghai Bank at face value for the residents of Hong Kong some $35,000,000.00 of Japanese occupation currency which had been put into circulation by the Japanese Government during the occupation of the Crown Colony of Hong Kong.

This Court, in *United States* v. *Arjona*, 120 U.S. 479 (1887) held that the law of nations imposes a duty on the

United States to prevent any injury to another nation or its people by the counterfeiting of its money, as follows:

> p. 479-489 ". . . it was incumbent on the United States as a Nation to use due diligence to prevent any injury to another nation or its people by counterfeiting its money, or its public or quasi public securities. This statute was enacted as a means to an end, that is to say, as a means of performing a duty which had been cast on the United States by the law of nations."

The Japanese occupation notes were a legal medium of exchange and the acts of the United States in secretly counterfeiting such notes offends the law of nations. The technical defense of the Statute of Limitations should not be allowed to defeat the law of nations.

> *Aboitz & Company* v. *Price,* 99 F. Supp. 602, 607, 611, 613, 628 (1951).
>
> *Haw Pia* v. *China Banking Corporation,* G.R. No. L 554; 80 Phil. 604, April 9, 1948.

The United States owes the Philippine holders of its counterfeited currency an obligation of good faith and fair dealing and should give Philippine interests at least equal weight to its own interests in considering payment for its counterfeited occupation currency. *Crisci* v. *Security Insurance Company,* April 2, 1967, 35 L.W. 2629-30.

The United States, as a signatory of the Hague Conventions, is bound to respect private property even in time of War. *Rules of Land Warfare, U.S. War Department, Basic Field Manual FM 27-10,* pp. 320-321, and F.M. *2710 OPNAV 50 E 3, Hague Conventions and Regulations* Sec. III, Art. 46 etc., *Oppenheim,* Vol. II, 6th ed. p. 313.

As a signatory to the Charter of the United Nations and its Division of Human Rights, the United States assumed a grave responsibility for dealing fairly and equitably with its former nationals and citizens in the Philippine Islands.

The claims of plaintiff are based upon the United States Constitution which protects against deprivation of private property without due compensation and without due process of law and upon well recognized principles of international law which prohibit the confiscation of private property, and upon express and implied contracts with the United States Government.

The United States is responsible to its own citizens and nationals for its confiscation of private property.

Seery v. *United States,* 130 Ct. Cl. 481 (1955).

Even a formally ratified treaty cannot accomplish what the Constitution forbids.

The Cherokee Tobacco, 11 Wall. 616.

De Geofroy v. *Riggs,* 133 U.S. 258, 267 (1890).

United States v. *Guy W. Capps,* 204 F. (2) 655 (1955).

The United States, with Philippine help, was completely victorious over Japan in World War II, but the plaintiff has no adequate remedy against Japan because defendant has caused plaintiff's rights to be waived. By its action in sponsoring and imposing Sec. 14(b) of the Peace Treaty upon the Philippines, the United States appears to have shown greater concern for the welfare of its former enemy Japan than for loyal and faithful Filipinos.

On October 6, 1943, President Franklin D. Roosevelt sent a special message to the United States Congress which was widely circulated in the Philippines over General MacArthur's unqualified endorsement. President Roosevelt pledged the entire resources of the United States for the protection of the independence of the Philippines and stated

> "We shall keep that promise just as we have kept every promise which the United States has made to the Filipino people."

The policy of the United States in World War II of secretly counterfeiting and circulating Japanese occupation currency in the Philippines in order to harass the Japanese carried with it an obligation and a commitment to redeem such counterfeit currency after World War II ended.

It is just as important that the United States as a nation keep its word as it is that a single State in the Union keeps its word.

> *Trustees of Dartmouth College* v. *Woodward*, 4 Wheaton 518 (1819).

CONCLUSION

The defendant, by its own conduct in fraudulently concealing material facts, has tolled the Statute of Limitations.

The trust and confidence reposed in the United States by the Philippines is equalled only by the obligation and duty which the United States owes to its former citizens and nationals in the Philippines.

Petitioner should be permitted to have its day in Court and the case should be remanded to a Commissioner of the Court of Claims to hear the evidence.

WHEREFORE the petitioner respectfully prays that certiorari be granted to review the opinion below.

Respectfully submitted,

LAWRENCE C. MOORE
Federal Bar Building
1815 H Street, N.W.
Washington, D. C. 20006
Counsel for Petitioner

September 6, 1967

APPENDIX

APPENDIX

APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 416-64
(Decided February 17, 1967)

THE JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INC. (JAPWANCAP, INC.) v. THE UNITED STATES

Lawrence C. Moore, attorney of record, for plaintiff.

Edward J. Friedlander, with whom was *Assistant Attorney General Barefoot Sanders*, for defendant.

Before COWEN, *Chief Judge*, LARAMORE, DURFEE, DAVIS, COLLINS, SKELTON and NICHOLS, Judges.

ON DEFENDANT'S MOTION TO DISMISS AMENDED PETITION

DURFEE, *Judge*, delivered the opinion of the court:

On January 3, 1942, the Commander-in-Chief of the Imperial Japanese Forces in the Philippine Islands declared that his army of occupation would henceforth use Japanese military currency as legal tender. Approximately six weeks later, the Filipinos were apprised of this directive and ordered to accept the currency at its face value. Those who refused to obey the order were to be severely punished. During their three years of occupation, the Japanese forces appropriated considerable amounts of personal property, food, and other needed commodities. In return, they gave the Filipinos the bulk of the eleven billion pesos of the aptly nicknamed "Mickey Mouse Currency." While the Japanese remained on the islands, General Douglas MacArthur, the Commander-in-Chief of the Allied Forces in the Southwest Pacific Area, ordered the circulation of several hundred million counterfeit Japanese war notes. This

bogus currency was used by the Allied Forces to support United States intelligence agents and the Filipino resistance movement as well as to sabotage and dislocate the economy of the islands during Japanese occupation.[1]

Plaintiff is a Philippine corporation with between 130,000 and 150,000 members, all owning various amounts of both the real and the counterfeit Japanese currency. Their total holdings of 3.5 billion pesos have been deposited in a concrete vault under the custody of the president of plaintiff corporation. Plaintiff filed its petition in this court on December 15, 1964. The petition seeks: (1) reimbursement for the counterfeit money in its possession, (2) redemption by the United States of the Japanese-issued war notes, and (3) payment by the United States of its claims against Japan for the loss of human life and physical destruction. The damages sought total slightly under ten billion dollars.

I

This court lacks jurisdiction to hear a claim that is not filed "within six years after such claim first accrues." 28 U.S.C. § 2501; *Soriano* v. *United States*, 352 U.S. 270, 273-274 (1957). A claim first accrues when all the events have occurred which fix the alleged liability of the United States and entitle the claimant to institute an action.[2] For its claim to be timely, plaintiff must show that events which directly affect the rights asserted in this suit took place after December 15, 1958, or within six years prior to the filing of this petition. *Baer* v. *United States*, 164 Ct. Cl.

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[1] To facilitate discussion, we assume that the factual allegations in the petition are true. *Guessefeldt* v. *McGrath*, 342 U.S. 308, 310 (1952); *United States* v. *New Wrinkle, Inc.*, 342 U.S. 371, 373 (1952).

[2] *Nager Electric Co., Inc., and Keystone Engineering Corp.* v. *United States*, 177 Ct. Cl. —, 368 F. 2d 847, 851-852 (1966), and cases cited therein. See also, *Developments in the Law—Statutes of Limitations*, 63 Harv. L. Rev. 1177, 1201 (1950).

447, 450, *cert. den.* 379 U.S. 878 (1964). See, also, *United States* v. *Dickinson,* 331 U.S. 745, 749 (1947); *Klein* v. *United States,* 152 Ct. Cl. 221, *cert. den.* 366 U.S. 936 (1961).

The facts demonstrate that the accrual date was prior to December 14, 1958. The Japanese occupation of the Philippines formally ended on September 2, 1945. 59 Stat. 1733; *Compania Maritima* v. *United States,* 136 Ct. Cl. 697, 706, 145 F. Supp. 935 (1956); *Marcos* v. *United States,* 122 Ct. Cl. 641, 102 F. Supp. 547 (1952). At that time the Japanese mandate requiring acceptance of the currency lost all force as the Filipinos no longer had to fear punishment for refusing the war notes. Since no evidence has been presented arguing that the distribution halted at any other time, this date is the logical one for determining when the Japanese and the Americans quit circulating both the real and the counterfeit money. Plaintiff bases its claims for United States indemnification of its rights against Japan on the Treaty of Peace between the Allied Powers and Japan.[3] The proclamation of the treaty was on April 28, 1952. At this time, plaintiff's rights under the treaty became fixed inasmuch as there existed only an indefinite possibility that events would take place which would alter the treaty and concomitantly plaintiff's rights under it. As this court said in *Baer* v. *United States, supra,* at p. 451:

> * * * The bare possibility that some future international settlement—conceivably, decades in the future—*might* authorize plaintiff to collect his debt in full could not postpone the accrual of so specific a claim of present deprivation. This case is wholly unlike the

[3] It alleges that the U.S. assumed all claims against Japan by virtue of Article 14(b) of the Treaty:

"Except as otherwise provides in the present Treaty, the Allied Powers waive all reparation claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation."

Dickinson and comparable cases in which the course of future events could reasonably be expected to have a direct effect on the claimant's rights. Here the future circumstance on which the plaintiff relies was a mere indefinite possibility which was too slight to arrest the accrual of the claim (if one existed).

II

In certain instances the running of the statute will be suspended when an accrual date has been ascertained, but plaintiff does not know of his claim. Ignorance of rights which should be known is not enough. *Art Center School* v. *United States,* 136 Ct. Cl. 218, 227, 142 F. Supp. 916, 921, (1956); *Thomas* v. *United States,* 125 Ct. Cl. 76, 80 (1953); *Dion* v. *United States,* 137 Ct. Cl. 166 (1956); *Navajo Freight Lines, Inc.* v. *United States,* 176 Ct. Cl. (No. 316-63), (Decided July 15, 1966). Plaintiff must either show that defendant has concealed its acts with the result that plaintiff was unaware of their existence or it must show that its injury was "inherently unknowable"[4] at the accrual date. An example of the latter would be when defendant delivers the wrong type of fruit tree to plaintiff and the wrong cannot be determined until the tree bears fruit. See 1 *Williston on Sales,* § 212(a) (Rev. ed. 1948). In this situation the statute will not begin to run until plaintiff learns or reasonably should have learned of his cause of action. Dawson, *Fraudulent Concealment and Statutes of Limitations,* 31 Mich. L. Rev. 875 (1933); Harv. L. Rev. *supra. But cf. Pickett* v. *Aglinsky,* 110 F. 2d 628 (4 Cir. 1940); *Kennedy* v. *Johns-Manville Sales Corp.,* 135 Conn. 176, 62 A. 2d 771 (1948).

Plaintiff makes no argument that the peace treaty with Japan was either concealed by defendant or "inherently unknowable" until a date later than the accrual of its cause of action. With regard to the counterfeit currency, it as-

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[4] *Urie* v. *Thompson,* 337 U.S. 163, 169 (1949).

serts that defendant withheld information and that it was not possible for it to know of the counterfeiting until 1964. Once the statute of limitations has been tolled, it is not necessary that plaintiff obtain a thorough understanding of all the facts to halt the suspension. Defendant is not required to wait until plaintiff has started substantiating its claims by the discovery of evidence. Once plaintiff is on inquiry that it has a potential claim, the statute can start to run. See, Mich. L. Rev. *supra,* at 912. This standard is in line with the modern philosophy of pleading which has reduced the requirements of the petition and left for discovery and other pretrial procedures the opportunity to flesh out claims and to define more narrowly the disputed facts and issues. See Ct. Cl. Rules 13-18, 38-46.[5]

Assuming *ad arguendo* that either defendant concealed the counterfeiting or that it was "inherently unknowable," we find from the following that plaintiff was on inquiry that its cause of action existed at a date prior to six years before it filed its petition.

In 1946, the Britannica Year Book stated at p. 572-573:

> * * * Finances were in a chaotic condition due to the various currencies in use. The Japanese during their three and one-half years of occupation, had printed billions of dollars of worthless paper money which was widely circulated and used for all business purposes. This condition was accentuated by the issuance of millions of pesos through guerilla organizations to maintain fighting units so vital to the ultimate success of the U.S. The issuance of this currency was authorized by the U.S. Army.

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[5] See, also *Conley* v. *Gibson,* 355 U.S. 41 (1957); *Dioguardi* v. *Durning,* 139 F. 2d 774 (2 Cir. 1944); *Nagler* v. *Admiral Corp.,* 248 F. 2d 319 (2 Cir. 1957); la Barron and Holtzoff § 255 (Wright ed.). *But cf.* McCaskill, *The Modern Philosophy of Pleading—A Dialogue Outside the Shades.* 38 ABAJ 123 (1952).

In the following year, reference was made to the bogus currency in a leading financial journal:

> * * * The position of the Filipinos seems to be bolstered by the fact that the Australian and American Governments had also printed about 30 million of the Mickey Mouse for use by their agents in the islands during the occupation. The American and Australian-printed Mickey Mouse also contributed to the inflation, and the Filipino people can hardly be penalized for its use of that currency. Ortigas, "Aftermath of Japanese Currency in Philippines." 165 The Commercial and Financial Chronicle 1378, 1407, Col. 3 (March 3, 1947).

On December 10, 1952, the President of plaintiff corporation wrote the following to Mrs. Franklin D. Roosevelt:

> Since the United States Government cannot deny that General MacArthur has also falsified the "Japanese Currency," America should be the first to initiate this act of "Goodwill" towards her ally, not only as a reward but as a token and in recognition of our sufferings and all the things we have lost due to those War Notes which was [sic] paid in exchange of our properties, animals and plants thus making us destitutes and hungry and poor as a beggar this being the only chance whereby our families could survive.

A letter of similar content, but of greater length was mailed on the same date to the President of the General Assembly of the United Nations.

In conclusion, we hold that plaintiff's cause of action accrued at a date more than six years prior to its instituting suit in this court. Therefore, plaintiff's claim is time-barred and outside this court's jurisdiction. Defendant's motion is granted, and the amended petition is dismissed.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 581

JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INC., (JAPWANCAP, INC.), PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On December 15, 1964, petitioner, a Philippine corporation, filed suit in the Court of Claims, seeking compensation, *inter alia*,[1] for counterfeit Japanese occupation currency held by it which had been intro-

[1] In addition, petitioner, in the court below, sought redemption by the United States of the occupation currency issued by the Japanese military forces, and payment by the United States of the claims of its members against Japan for loss of life and physical destruction. These claims have been abandoned in this Court (Pet. 4).

duced by the United States into the Philippine World War II economy for the support of its agents during the Japanese occupation of that country.[2] The Court of Claims dismissed the action as untimely, the relevant events having occurred no later than September 2, 1945. (373 F. 2d 356; Pet. App. 2.) This holding is clearly correct and no further review is warranted.

1. Petitioner's claim that the United States concealed its acts with respect to the counterfeit currency in such a fashion as to prevent it from discovering the facts or from being put on notice, so that the limitations bar was prevented from running, is wholly without merit. As the Court of Claims noted (Pet. App. 5a), the Encyclopedia Brittanica Year Book of 1946 specifically mentioned the issuance of this currency by the United States Army, and in 1947 an article in a leading financial journal referred to the distribution of the occupation currency by the United States (Pet. App. 6a).[3] Thus, it is difficult to understand petitioner's contention that the United States fraudulently concealed the fact of its use of bogus occupation currency (Pet. 2), especially in light of the letters by its President in 1952, 12 years prior to the filing of this action, to Mrs. Eleanor Roosevelt[4] and to the President of the General As-

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[2] All facts alleged in the petition in the Court of Claims are taken as true for present purposes.

[3] Defendant's Exhibit A attached to Defendant's Motion to Dismiss Amended Petition.

[4] Defendant's Exhibit B attached to Defendant's Motion to Dismiss Amended Petition.

sembly of the U.N.,[5] specifically asserting that the United States Army had falsified occupation currency.[6]

2. We also note briefly that, aside from the question of limitations, the claim could not prevail.

a. By agreement of 11 September, 1946, between the governments of the Republic of the Philippines and the United States[7], the United States undertook to pay (and subsequently did pay) to the Philippines $25,000,000.00,

> On account and in part payment of the financial obligations and responsibilities of the United States arising from: (1) the issuance in the Philippines of emergency currency, guerilla currency, military scrip or other writing intended to circulate as money, the issuance of which was duly authorized, * * *.

The government of the Philippines, in consideration therefor, agreed that it,

> hereby releases and acquits the United States of the unpaid balance of the financial obligations

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[5] Defendant's Exhibit C attached to Defendant's Motion to Dismiss Amended Petition.

[6] In its petition for rehearing below, petitioner asserted that its 1952 letter to Mrs. Roosevelt constituted the timely filing of a claim in the Court of Claims under *Honda* v. *Clark*, 386 U.S. 484. This contention has apparently been abandoned in this Court.

[7] Agreement No. W-ANL (PA-I)—4530, Agreement Between the United States and the Philippines for the Sale of Certain Surplus War Property, executed, on behalf of the Republic of the Philippines, by President Manuel Roxas.

> and responsibilities aforesaid and shall forever indemnify and hold the United States harmless from all claims and demands of every nature arising therefrom by any person or persons whomsoever.

Article 5(b). Thus petitioner's only remedy, if it had any valid claim, would be against its own government, not against the United States. Cf. *United States* v. *Chemical Foundation*, 272 U.S. 1, 11; *United States* v. *Pink*, 315 U.S. 203.

b. Even apart from the agreement, petitioner's claim would fail. There could be no allegation, of course, that the counterfeit currency, utilized in time of war in enemy-controlled territory, purported to be an obligation of the United States. Nor is there any allegation that the counterfeit currency was discovered by the Japanese to be false, or that it was not accepted at the same rate as the genuine occupation currency. The genuine Japanese occupation currency, of course, became wholly worthless when the Japanese military government left the Philippines. In short, petitioner assertedly holds[8] counterfeit currency which at all times has been worth exactly as much (or as little) as the genuine occupation currency it was thought to be when petitioner's predecessors in interest accepted it. Thus neither petitioner nor its predecessors in interest have suffered damage by reason of the counterfeiting.

---

[8] Petitioner's acquisition of this currency, if it is correct in asserting that it constitutes a claim against the government, would appear to be in violation of the Anti-Assignment Act, 31 U.S.C. 203, thus making petitioner's claim void.

c. Even if petitioner or its predecessors in interest were able to assert injury by reason of this exercise of the war powers of the United States, it seems plain, under the decisions of this Court, that no suit to recover therefor could be maintained in the Court of Claims. *United States* v. *Caltex, Inc.*, 344 U.S. 149; *Horowitz* v. *United States*, 267 U.S. 458.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1967.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 581

JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INC., (JAPWANCAP, INC.), *Petitioner,*

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

LAWRENCE C. MOORE
1815 H St., N.W.
Washington 6, D. C.
Counsel for Petitioner

November 1967

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In its Memorandum in Opposition (hereinafter referred to as "Memo"), respondent finally acknowledges that during World War II, the United States circulated in the Philippines counterfeit Japanese occupation currency. For the first time the respondent brings to light an Executive Agreement dated September 11, 1946 made between the U.S. and Philippine Governments without notice or consent of those affected, and argues that this agreement released the United States from any further liability for the counterfeit currency.

Petitioner respectfully points out that respondent not only relies on a document not heretofore in evidence, but also takes material in such document out of context to support its contention that the Philippine Government in 1946 agreed to hold the United States harmless from any liability for the counterfeit currency.

In April 1966 when this case was before the United States Court of Claims, plaintiff moved for a Call on the State Department to produce all documents in its possession relative to the counterfeit currency. Respondent successfully resisted this motion. Now, however, when the case is before this Court on a Petition for a Writ of Certiorari, the respondent relies on an Executive Agreement signed by a representative of the State Department which respondent refused to produce in the United States Court of Claims, and the existence of which plaintiff was unaware until now.

The pertinent parts of the Executive Agreement of September 11, 1946 read as follows:

* * * * *

"WHEREAS, the United States has a financial obligation to the Philippines arising from advances and loans to the United States and the issuance of emergency currency and guerilla currency during the war with Japan;

"NOW THEREFORE, in consideration of the promises and the mutual agreements and covenants hereinafter stated, it is agreed;

* * * * *

ARTICLE 5. CONSIDERATION

* * * * *

b) That the United States shall forthwith pay to the Philippines the sum of Twenty-five Million Dollars ($25,000,000) *on account and in part*

payment of the financial obligations and responsibilities of the United States arising from:

1) The issuance in the Philippines of emergency currency, guerilla currency, military scrip or other writing intended to circulate as money, the issuance of which was duly authorized, and

2) Any unpaid advances, loans, credits, and overdrafts by the Philippine National Bank, the Commonwealth of the Philippines or any other corporation, political subdivision or agent thereof, during the war with Japan but not after the second day of September 1945; and that the Philippines, as partial consideration for the property transferred hereunder and not identified in ARTICLE 5, a. hereof as granted under the Philippine Rehabilitation Act of 1946, hereby releases and acquits the United States of the unpaid balance of the financial obligations and responsibilities aforesaid and shall forever indemnify and hold the United States harmless from all claims and demands of every nature arising therefrom by any person or persons whomsoever." (Emphasis added)

Notwithstanding respondent's assertion that

> "There could be no allegation, of course, that the counterfeit currency, utilized in time of war in enemy-controlled territory, purported to be an obligation of the United States" (Memo, page 4),

it is clear that in the Executive Agreement the United States acknowledged its obligation and responsibility for the counterfeit currency. It is also clear that the $25,000,000 paid by the United States was only "on account and in part payment" and not in full and final settlement of the obligations and responsibilities enu-

merated in Article 5(b)(1) above, and that the payment went to the Philippine Government and not to the innocent Filipino holders of the counterfeit currency.

The Japanese occupation notes were a legal medium of exchange and the acts of the United States in secretly counterfeiting such notes offended the law of nations and violated international law.

The "hold harmless" clause in Article 5(b)(2) on which respondent now relies, relates not to the obligations and responsibilities for the currencies enumerated in Article 5(b)(1), but solely to the obligations of the United States for the unpaid advances, loans and credits referred to in Article 5(b)(2).

The respondent notes the absence of any allegations that the counterfeit currency was discovered by the Japanese to be false or that it was not accepted at the same rate as the genuine occupation currency (Memo, page 4). Respondent implies that the United States is no more obligated to redeem the counterfeit currency than the Japanese Government is obligated to redeem its genuine occupation currency. But it should be noted that plaintiff alleges in its Petition for Certiorari that Article 14(b) of the 1952 Japanese Peace Treaty, which waived plaintiff's rights to claim against Japan, was forced upon the Philippines under duress by the United States.

Respondent refers to plaintiff's 1952 letter to Mrs. Roosevelt but neglects to refer to plaintiff's letter to President Dwight D. Eisenhower on February 5, 1953 which was cited in plaintiff's supplemental Memorandum of Points and Authorities in support of plaintiff's Motion for a Re-hearing in the United States Court of Claims. Under the doctrine of *Honda* v. *Clark*

(1967) 386 U.S. 484, *Crown Coat Front* v. *U. S.* (1967) 386 U.S. 503, and *Barchet* v. *N.Y.C. Tr. Auth.* 20 N.Y. 2nd, 1; 281 N.Y.S., 2nd, 289 (May 1967), the filing of plaintiff's claim with the President of the United States on February 5, 1953 as well as the filing of the claim in 1952 with Mrs. Roosevelt as United States representative to the United Nations, should be liberally construed to constitute a timely filing, tolling the running of the Statute of Limitations. The plaintiff, representing thousands of poor Filipinos who held such counterfeit currency when the Japanese surrendered, was unfamiliar with Court procedures and practices in the United States and any doubts should be resolved in their favor. Contrary to respondent's assertions in its Memo, plaintiff has never abandoned its contention that filing the claim with the President of the United States in 1953, as well as with Mrs. Roosevelt as United States representative to the United Nations in 1952, constituted a timely filing of the claim. The United States bears a grave responsibility for fair and equitable dealing with its former nationals and citizens in the Philippines and the claims which plaintiff asserted in the U. S. Court of Claims have never been abandoned by plaintiff.

The mere fact that there were references in the Britannica Year Book in 1946 and in the Commercial and Financial Chronicle in 1947 to the issuance of guerilla currency by the United States does not destroy plaintiff's argument that there was a fraudulent concealment by respondent of its part in manufacturing and circulating the counterfeit occupation currency. The United States has been very careful never to admit that it counterfeited Japanese occupation currency, at least until now when it disclosed the Executive Agree-

ment of September 11, 1946. Even in the Executive Agreement the United States has been careful to refer only to

> "emergency currency, guerilla currency and military scrip or other writing intended to circulate as money, the issuance of which was duly authorized. . . ."

and not to refer to counterfeit currency. All attempts by plaintiff to obtain any information concerning the counterfeit currency have been resisted by respondent with the argument that restrictions inherent in the continued classification of "Top Secret" forbade respondent from revealing anything at all concerning the counterfeit currency. The information was kept secret not only from the plaintiff, but also from the Court. Thus, respondent has, by its own acts, tolled the Statute of Limitations. If the Executive Agreement of September 11, 1946 had been in evidence before the United States Court of Claims, the decision of the Court might have been different.

The cases cited by respondent are inapposite, irrelevant and inapplicable to the instant case.

For the foregoing reasons, the petition for a Writ of Certiorari should be granted and the case remanded to a Commissioner of the United States Court of Claims for trial.

Respectfully submitted,

LAWRENCE C. MOORE
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Counsel for Petitioner

November 1967

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OCTOBER TERM, 1967

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THE JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INCORPORATED (JAPWANCAP, INC.)

v.

THE UNITED STATES

PETITION FOR RE-HEARING OF DECISION DENYING WRIT OF CERTIORARI

LAWRENCE C. MOORE
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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

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THE JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INCORPORATED (JAPWANCAP, INC.)

v.

THE UNITED STATES

PETITION FOR RE-HEARING OF DECISION DENYING WRIT OF CERTIORARI

Petitioner respectfully prays that a re-hearing be granted on the Decision of this Court Denying a Writ of Certiorari and as reasons therefore states as follows:

Plaintiff sued in the United States Court of Claims for (1) reimbursement for counterfeit Japanese occupation currency which was manufactured and circulated in the Philippines by the United States; (2) for redemption by the United States of Japanese-issued occupation currency; and (3) for compensation by the United States of plaintiff's claims against Japan for loss of human life and physical destruction.

In this Court, plaintiff has limited itself to its first claim, namely reimbursement for the value of the counterfeit Japanese occupation currency issued and circulated by the United States Government. This claim is based on the ground that there was a sufficient concealment of material facts to toll the running of the Statute of Limitations. Plaintiff has prayed that its case be remanded to a Commissioner of the United States Court of Claims to take evidence as to the extent of plaintiff's knowledge of the counterfeiting and whether a fraudulent concealment by defendant prevented the discovery of the fraud by the plaintiff prior to the running of the Statute of Limitations.

Defendant, in its Memorandum in Opposition, has admitted counterfeiting the Japanese occupation currency used in the Philippines, but asserts that by Executive Agreement of September 11, 1946, the Philippine Government accepted $25,000,000.00 in return for a complete release from all liability. It is plaintiff's contention however, that the Agreement of September 11, 1946 covered only "the emergency currency, guerilla currency, military scrip and other writing intended to circulate as money, the issuance of which was duly authorized". Samples of each such wartime currency are presented as Exhibits A, B and C in the Appendix hereto.

The Japanese occupation currency which defendant admits having counterfeited, is quite different. The samples set forth as Exhibit D in the Appendix hereto illustrate this difference.

Plaintiff contends that the emergency, guerilla and military currency referred to in the Agreement of September 11, 1946 did not include the counterfeit

Japanese occupation currency; that the release and hold harmless clauses in said Executive Agreement do not apply to said counterfeit Japanese occupation currency; and that the United States is liable for the counterfeit currency which it manufactured and circulated in addition to the emergency, guerilla and military currency for which it paid $25,000,000.00 in settlement.

Wherefore plaintiff respectfully prays that a rehearing be granted on its Petition for a Writ of Certiorari.

Respectfully submitted,

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1815 H Street, N. W.
Washington 6, D. C.
Counsel for Petitioner

January 1968

APPENDIX

EXHIBIT A

Military Script

EXHIBIT B

Emergency Currency

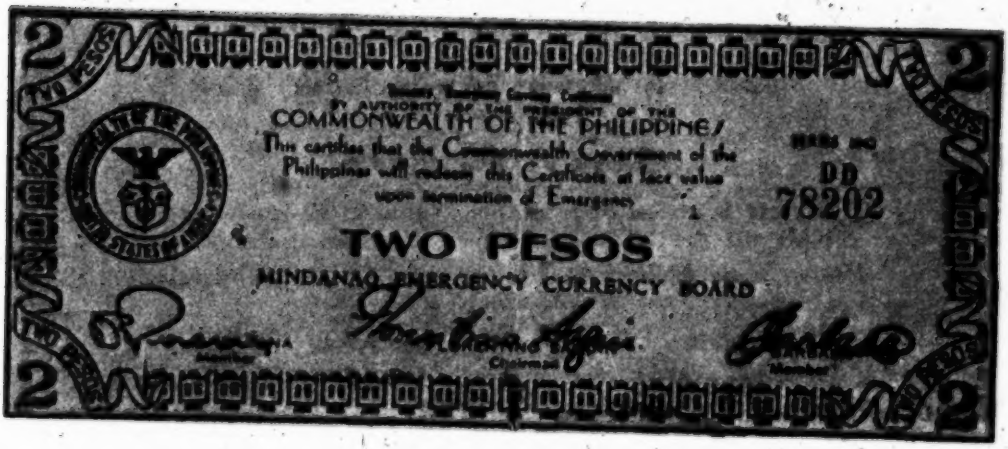

Exhibit B (continued)
Emergency Currency

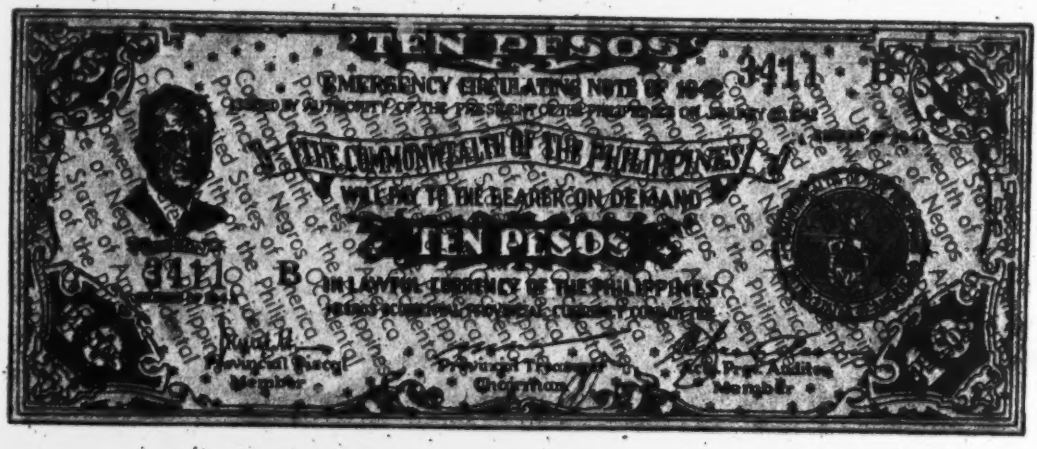

EXHIBIT C
Guerilla War Notes

EXHIBIT D

Japanese War Notes Genuine or Counterfeited by the United States

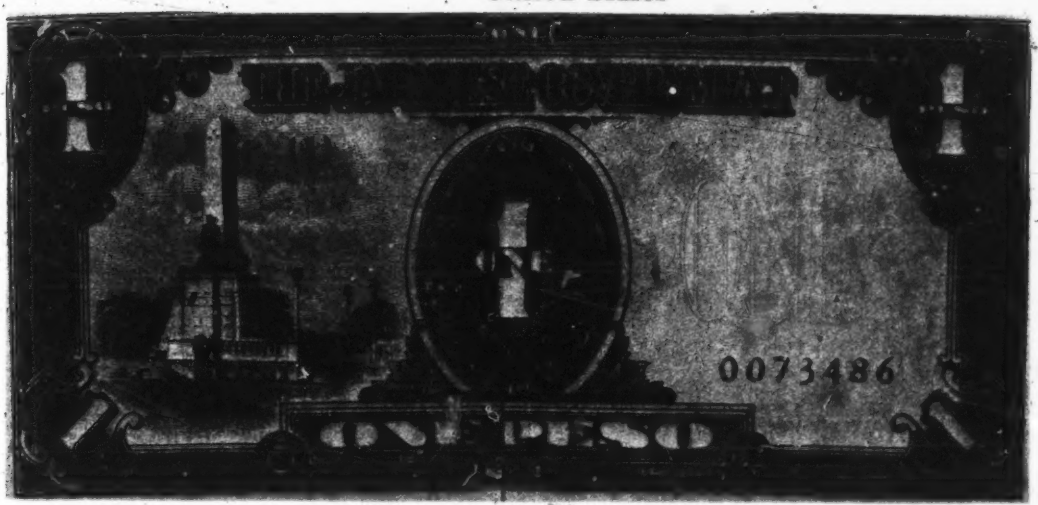

Exhibit D (continued).

Exhibit D (continued)

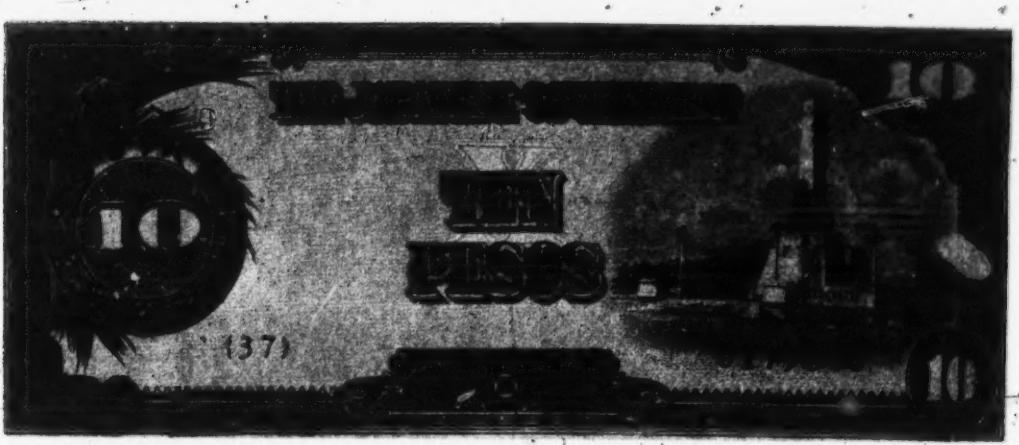

Exhibit D (continued)

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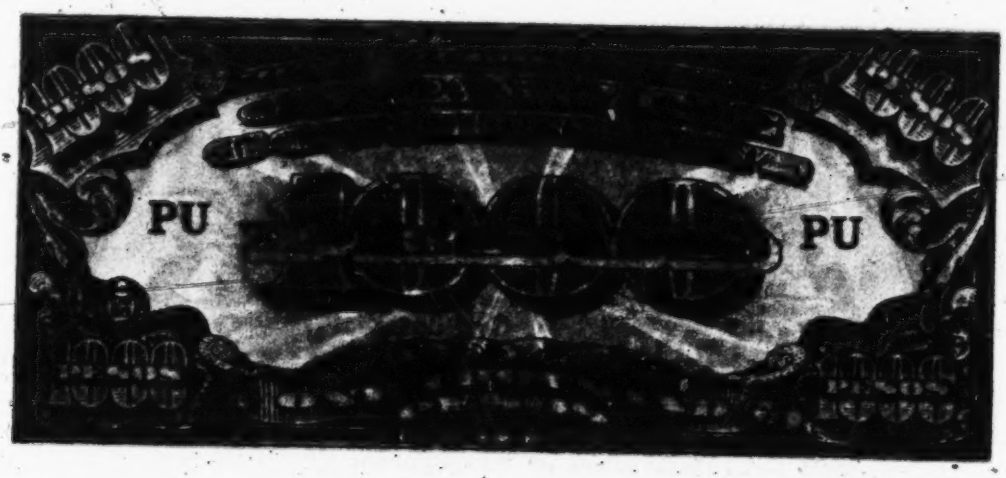

Certificate

Certified that the foregoing Petition for a Re-Hearing is presented in good faith and not for delay and that it is restricted to substantial grounds not heretofore raised.

LAWRENCE C. MOORE